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REMARKS

It is appreciatively noted that claim 13 has been allowed. Since claims 11, 12, 14, and 15 are dependent on claim 13, it is respectfully requested that they also be allowed.

It is also appreciatively noted that claim 3 (as well as claims 18 and 22 and now canceled claim 19) have been indicated to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims and were previously indicated to be so allowable as originally presented. Claim 3 has been so rewritten as it was originally presented, and claims 22 and 23, as amended, are dependent thereon. It is therefore respectfully requested that claims 3, 22 and 23, as amended, be allowed.

Claim 20 has been rejected under 35 USC 112, second paragraph, on the basis of lack of antecedent basis for "said respective cable." Claim 20 has been amended to be dependent on claim 5 in which there is such antecedent basis. It is respectfully submitted, that, as amended, claim 20 particularly points out and distinctly claims the subject matter which Applicant regards as the invention. Accordingly, it is respectfully requested that the rejection under 35 USC 112 of claim 20 be withdrawn.

The rejections of claims 1 and 24 are rendered moot by the cancellation thereof.

Claim 2 has been rejected under 35 USC 103(a) as not being patentable over U.S. patent 6,550,836 to Rigau in view of U.S. patent 5,775,759 to Cummins and further in view of U.S. patent Jarman, the Examiner stating that it would not have been unobvious to modify a plate such as that disclosed by Rigau to have an upper edge having a length that is substantially equal to a length of the alternative tailgate panel edge and thus resulting in two of the side panels being hingedly connected to

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the side edges of one plate (the one plate replacing the two plates 60 of Rigau), as taught by Cummins, in order to protect the tailgate surface from being damaged by a load, and that it would not have been unobvious to modify an assembly such as that disclosed by Rigau to have the pair of cables attachable to the vehicle, as taught by Jarman, in order to allow the alternative tailgate to be in the open position while the side panels are in the folded position, the Examiner referring to figure 2 of Jarman.

Claim 2 has been rewritten in independent form and further recites a pair of side panels hingedly connected to said side edges respectively of said plate. This recitation, found in now canceled claim 24, finds support in Figs. 1 and 2 of the drawings, as indicated in the prior Amendment. As amended, claim 2 also recites with the side panels vertically disposed, the alternative tailgate panel is hingedly movable while the tailgate is in a horizontal position between a closed position wherein the alternative tailgate panel is vertical and an open position wherein the alternative tailgate panel forms an angle of about 180 degrees with the tailgate. These closed and open positions are illustrated in Figs. 3 and 1 respectively of the drawings. Claims 4, 5, 7, 8, 9, 18, 20, and 21 have been amended to be dependent thereon. For the reasons provided hereinafter, it is respectfully submitted that claim 2, as amended, is unobvious over the references of record and therefore patentable.

In accordance with the present invention, a tailgate extension assembly is provided which can be quickly and easily installed and removed as a unit merely by attaching a plate to or detaching it from the tailgate. Moreover, the unified assembly is provided to allow the convenience of operation similarly as a usual tailgate is operated including both (1) movement of the alternative tailgate into the closed or vertical position

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illustrated in Fig. 3 of the drawings for securing loads on the vehicle bed, and (2) movement of the alternative tailgate into the open or horizontal position illustrated in Fig. 1 of the drawings for loading or unloading. The unified assembly is also provided for (3) movement into a stowed position, as illustrated in Fig. 2 of the drawings, against the inner tailgate surface so that it doesn't get in the way when not being used. Its unified assembly provides for quick and easy movement of the alternative tailgate between these 3 positions while desirably alleviating concerns about keeping track of various parts, particularly if it is necessary to remove the unified assembly from the vehicle for storage.

Cables are provided to support the alternative tailgate in the open position. In order to provide the necessary stability to the support function, the cables are desirably provided for connection to the vehicle.

The key to providing such a unified assembly which functions quickly and easily in the same manner as an ordinary tailgate is the provision of a plate, illustrated at 36 in Fig. 1 of the drawings. While this plate may serve to protect the tailgate surface, as asserted by the Examiner, it thus also serves a much more important function for the purposes of this invention. Thus, the plate is quickly and easily attachable to and detachable from the tailgate and provides for hinged attachment thereto of both the alternative tailgate panel and side panels, thereby allowing movement, quickly and easily, of the alternative tailgate panel, like an ordinary tailgate, between the open and closed positions of Figs. 1 and 3 respectively of the drawings as well as the stowed out-of-the-way position of Fig. 2 of the drawings. Whether the unified assembly is in use on the vehicle or in storage, concerns about misplacing parts are alleviated.

Jarman discloses an apparatus for extending vehicle cargo

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area which includes a main panel pivotally attached to the tailgate and a pair of side panels pivotally attached to the main panel. When in an open position (Fig. 2 thereof), the side panels are rotated to lie flat against the main panel, and the main panel is supported by strut braces or cables, illustrated at 30 therein, which attach to the vehicle.

Jarman does not teach or suggest an assembly having a plate easily and quickly attachable to and detachable from a tailgate and to which an alternative tailgate and side panels are all attached, as provided by the present invention.

Rigau discloses a modular system for a vehicle bed consisting of a rectangular panel having substantially the width of a vehicle bed and mounting plates on the interior of the vehicle bed. Referring to Figs. 1 and 11 to 16 thereof, the mounting plates or side panels 58 are each hingedly coupled to a separate plate 60 (one coupled to one plate on one side and the other coupled to another plate on the other side) which is in turn secured to the respective inside edge portion of the tailgate 28. This allows the side panels to be folded against the tailgate. The plates 60 appear in Fig. 12 thereof to be formed to have vertical projections 70 having openings 68 thereon (which seems to be contrary to what is stated at col. 7, lines 25 to 27, thereof). The openings 68 are dimensioned to receive pins 14 extending from the lower side edges of the rectangular panel. Pins extending from the upper side edges may be received in holes, illustrated at 64 in Fig. 11 thereof, in the side panels. Rigau thus discloses separate plates for the side panels and that the rectangular panel is coupled at one side to one of the plates and at the other side to the other of the plates by removably inserting a pin 14 (Fig. 18) of the panel in a hole 68, as seen in Fig. 14 thereof.

Each of the hingedly connected side panels of Rigau has

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attached thereto one end of a support cable, illustrated at 78 in Figs. 12 and 13 thereof. The free end of the support cable is coupled to the panel 12 for support thereof.

Rigau does not teach or suggest an assembly wherein an alternative tailgate panel and a pair of side panels are all hingedly connected to a single plate, as provided by the present invention. Clearly, Rigau does not indicate any intention that its assembly be so unified. Instead, Rigau teaches away from the present invention with its clear teaching of a modular system instead. Not only would such a modular system be difficult to install and use as an alternative tailgate but it would be subject to misplacing of parts, for example, the rectangular panel could be misplaced or separated from the plates 60.

Rigau also teaches away from the present invention with its teaching that the support cables be attached to the hingedly connected side panels. In order for such to be sufficiently stable, the side panels must be adequately secured to the vehicle, which requires means such as a latch retaining plate, as discussed in the 4<sup>th</sup> paragraph of col. 7 of Rigau, or the structure discussed in the 5<sup>th</sup> paragraph of col. 7 of Rigau be secured to the vehicle. Such additional structure to be attached to the vehicle adds to the difficulty of installation.

Cummins discloses a vehicle bed extender which includes a bottom section fixedly mounted to the vehicle tailgate, a rear section pivotally attached to the bottom section, opposed side sections pivotally attached to the rear section, and a fastener mechanism to removably fasten the side sections to an inner surface of the vehicle bed. The extender is foldable into a stowed position illustrated in Fig. 3 thereof against the inner surface of the tailgate, and unfoldable to a closed position illustrated in Fig. 1 thereof and the position illustrated in Fig. 2 thereof wherein the rear section hangs downwardly from the

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tailgate in order to be out-of-the-way for loading and unloading, but otherwise not having any apparent use in this position.

Cummins does not teach or suggest the attachment of both an alternative tailgate panel and side panels to a plate attachable to a vehicle tailgate, as provided by the present invention. Instead, Cummins teaches away from the present invention with its teaching of the side sections being attached to the rear section. It would be dangerous to operate a vehicle with the assembly in the position illustrated in Fig. 2, and the assembly could very well be accidentally left in this position, with the side sections flapping outwardly, when the vehicle is operated. In addition, the assembly of Cummins requires the installation of a fastener mechanism on the vehicle, which, like Rigau, would make the installation process more difficult.

Cummins also does not teach or suggest an open position for its rear section and accordingly does not teach or suggest cables for holding its rear section in such an open position, as provided by the present invention.

Since the assembly of Rigau is modular and since the assembly of Cummins is of a non-modular construction, there is no motivation or impetus in either of these references for combining it with the other.

Even if there was motivation for combining the references, it would still be necessary to pick and choose from the features of each in an act of hindsight reconstruction in order to arrive at the present invention. For example, one must ignore the teaching of Cummins that the side panels be attached to the rear section and instead choose the alternative construction in Rigau. For another example, one must ignore the modular nature of the two plates 60 of Rigau and choose the section 24 of Cummins. For yet another example, one must ignore the cable arrangement in Rigau and pick and choose the cable arrangement in Jarman. Such

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hindsight reconstruction, it is respectfully submitted, is not permitted.

Even if Rigau and Cummins were properly combinable, the combination still would not result in the quick and easy to install assembly of the present invention since the combination would still contain a device which must be installed on the vehicle, i.e., either the latch retaining plate or the like of Rigau or the fastener mechanism of Cummins, either of which would make the installation process more difficult.

Applicant has come up with an easy and quick to install and use unified alternative tailgate assembly which conveniently can perform as an ordinary tailgate in both open and closed positions. Such an assembly is not provided by any of the above references. It is respectfully submitted that only with the benefit of impermissible 20-20 hindsight can the alternative tailgate assembly of the present invention be reconstructed.

Neither Rigau or Cummins or Jarman or any other of the references of record, whether taken together or individually, teaches or suggests an alternative tailgate assembly which comprises a plate for attachment to a vehicle tailgate, a panel which has an edge along which the panel is hingedly connected to an upper edge of the plate for serving as an alternative tailgate, wherein the plate upper edge has a length which is substantially equal to a length of the alternative tailgate panel edge, a pair of side panels hingedly connected to the side edges respectively of the plate whereby, with the side panels vertically disposed, the alternative tailgate panel is hingedly movable while the tailgate is in a horizontal position between a closed position wherein the alternative tailgate panel is vertical and an open position wherein the alternative tailgate panel forms an angle of about 180 degrees with the tailgate, and a pair of cables connected to the alternative tailgate panel and

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attachable to the vehicle for deploying the alternative tailgate panel in the open position, as claimed in claim 2, as amended, whereby the resultingly unified (non-modular) assembly may be quickly and easily installed and used, the unified assembly can perform as an ordinary tailgate in both open and closed positions, and the unified assembly can be folded and stowed in an out-of-the-way position against the tailgate inner surface when not being used and can be easily and quickly removed and stored without fear of loss of parts. It is therefore respectfully submitted that claim 2, as amended, is unobvious over the prior art and therefore patentable.

As previously discussed, claim 13 has been allowed, and claim 3 has been rewritten to be allowable. Since the remaining claims, as amended, are dependent on one or the other of claims 2, 3, and 13, as amended, it is respectfully submitted that they are also patentable.

Since each of the claims, as amended, has been shown to be patentable, it is respectfully submitted that this application is in condition for allowance, and such is respectfully requested. If it would aid in advancing this application to issue, the Examiner is respectfully requested to call the undersigned attorney for Applicant at the phone number below.

Respectfully submitted,



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